

STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE

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In the Matter of PECFA Appeal

Laura LaMuth [Johnson]  
Milw. County Evn. Svcs. Div  
907 North 10<sup>th</sup> Street, Room 314  
Courthouse Annex  
Milwaukee WI 43233

PECFA Claim # 53215-1295-24  
Hearing # 99-33

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INTERLOCUTORY RULING

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FINDINGS OF FACT

On January 26, 1999 the State of Wisconsin's Department of Commerce (hereinafter the "Department") denied \$52,393.80 in reimbursement for a PECFA claim submitted by Petitioner. Petitioner, by letter dated February 5, 1999 requested a hearing to appeal the "Non -Eligible amounts stated in the (Department's) payout table." The Petitioner also asked for advice in writing "of the (procedural) process and steps ... such that we may respond in the appropriate manner and resolve the costs we feel are in dispute."

The Department's attorney sent a letter on February 17, 1999 to Petitioner informing Petitioner that its appeal did not provide enough detail for a possible settlement and that in the absence of more specific information, the matter would be scheduled for hearing. The Department's attorney indicated to Petitioner that,

"Most of this information will have to be shared with me when the matter is ultimately scheduled for prehearing conference so there is nothing to be lost by providing this information now."

If I do not hear from you, I will assume you have no interest in discussing resolution and will file the appeal until it is scheduled for prehearing conference.”

The parties corresponded through summer 1999. On September 17, 1999 the Department, after reviewing materials sent by Petitioner, informed Petitioner that it would not offer any settlement. The Department attempted to persuade petitioner to withdraw its appeal. Petitioner did not withdraw; and after more exchange of correspondence/information, the matter ultimately was filed for pre-hearing conference.

On April 19, 2001 the Department sent its final communication to Petitioner. By email, the Department sought updated information regarding appearance of Petitioner’s new counsel. The Department also sought advice as to whether the matter should be scheduled immediately for pre-hearing conference or await the outcome of another and similar Milwaukee County appeal.

At the prehearing conference on July 24, 2001, the Department informed the Administrative Law Judge that it intended to file a Motion to Dismiss based on the inadequacy of Petitioner’s February 5, 1999 appeal. The Department filed its motion on September 7, 2001.

### CONCLUSIONS OF LAW

To secure appellate review, a petition to the Department of Commerce must conform to the guidelines established by Section 101.02(6)(f) of Wis. Stat. Because of its vagueness, the Administrative Law Judge finds that Petitioner’s appeal, in the instant matter, does not meet the statutory criteria. The burden of following the statutory directive rests solely with Petitioner. Neither the appellant’s request for guidance in its letter of appeal, nor Respondent’s February 17, 1999 letter

seeking additional information shifted any part of this burden to the Respondent.<sup>1</sup> This finding, however, is not dispositive to the Administrative Law Judge's decision herein.

The Department's motion is based on its present and strict application of Section 101.02(6)(f) Wis. Stat. According to Department's counsel, in the past and after receipt of an ambiguous appeal, the Department customarily afforded claimants the opportunity to perfect petitions by requiring them to provide detail. The Department's correspondence to Petitioner reflects this previous practice.<sup>2</sup>

The Department, through its several communications, encouraged petitioner to believe that it could either negotiate a settlement or obtain resolution through administrative adjudication. The Petitioner's willingness to comply with departmental demands was premised on this belief. The Petitioner presumably expended both significant time and additional financial resources to compile the materials the Department requested. After obtaining all sought after materials and determining that a settlement could not be reached, the Department, approximately two and one-half years after the filing of Petitioner's appeal, filed its Motion to Dismiss.

This judge believes the Department's decision to move towards a consistent application of

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<sup>1</sup>This Administrative Law Judge does not agree with the Administrative Law Judge's reasoning in the Appeal of William D. Lyons. In that claim, an appeal was filed which did not conform to statutory procedure. Contrary to its customary practice, the Department did not send the petitioner a letter of request for additional information. The Administrative Law Judge essentially shifted the burden of procedural compliance onto the Department by finding that absent such departmental inquiry, the Department's motion to dismiss could not be granted.

This Administrative Law Judge also does not agree with the Administrative Law Judge's reasoning in her Interlocutory Decision in the Appeal of Beatrice Grasee. Basing her decision in part on the Department's absence of follow-up inquiry, the Administrative Law Judge, there, denied the Department's Motion to Dismiss. The Administrative Law Judge also denied the motion stating that any vagueness in the Petitioner's appeal was overcome by the Department's knowledge of the facts surrounding the denial of reimbursement. Section 101.02(6)(f) does not contemplate relief to a claimant of its procedural obligations because of any assumed knowledge the Department is deemed to possess.

<sup>2</sup>The Administrative Law Judge's decision in the Appeal of Leander W. Schneider likewise reflects the Department's historical practice of allowing perfection of inadequate appeals. The Department's brief in the Schneider appeal and its letter to Petitioner Schneider also set forth the Department's then customary practice.

Section 101.02(6)(f)'s procedural requirements is well conceived. But, given the Department's practice at the time of the appeal, its application of said practice through repeated correspondence to Petitioner, the Petitioner's reliance on the Department's messages and the passage of time between the appeal and the filing of this action, a grant of the Department's motion to dismiss would compromise principles of fairness inherent in PECFA's appellate process.

#### ORDER

The Department of Commerce's Motion to dismiss is denied. This matter will proceed to hearing unless otherwise disposed.

Dated and mailed this \_\_\_\_\_ day of June, 2002.

By \_\_\_\_\_  
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